

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL WEST,)	
)	
Petitioner,)	
)	
v.)	No. 4:06CV1126(TCM)
)	
CITY OF O'FALLON, et al.,)	
)	
Respondents.)	

ORDER

This matter is before the Court upon petitioner's "Rule 59 Motion for Reconsideration" [Doc. #4]. On September 14, 2006, the undersigned issued an order dismissing petitioner's application for a writ of habeas corpus on the ground that petitioner - having been fined, not incarcerated, for violating various municipal offenses - was not in custody for purposes of a habeas corpus action. [Docs. #2 and #3].

Liberally construing the instant motion for reconsideration, petitioner asserts that despite having pleaded guilty to the municipal violations and being fined by the municipal court, he is subject to post-conviction restraints (i.e., a cash bond) and, therefore, he is in custody pursuant to Hensley v. Municipal Court, San Jose Milpitas Judicial District, Santa Clara County, 411 U.S. 345 (1973). Based on the foregoing allegation, the issue of whether plaintiff is in custody for purposes of habeas corpus cannot be determined merely from the face of the petition. Therefore, this Court's prior order denying the writ and

dismissing the instant action will be vacated.

However, a writ of habeas corpus is directed only to the state officer who has custody of the petitioner - not to every person whom petitioner believes violated his constitutional rights. See Rule 2(a) of the Rules Governing § 2254 Cases in the United States District Courts. Following Hensley, the proper respondents in this type of case would be the municipal court and the Attorney General for the State of Missouri. See also Rule 2 of the Rules Governing § 2254 Cases, Advisory Committee Notes.

In accordance with the foregoing,

IT IS HEREBY ORDERED that this Court's order and memorandum dated September 14, 2006 [Doc. #2], and this Court's order of dismissal dated September 14, 2006 [Doc. #3], are hereby **VACATED**.

IT IS FURTHER ORDERED that the City of O'Fallon, Missouri; Donna Morrow; Jerry Schulte; Robert M. Wohler; Jane Doe (municipal clerk); and John Doe (prosecuting attorney) are hereby **STRICKEN** from this action as improper respondents.

IT IS FURTHER ORDERED that the Clerk shall docket this action as follows: Michael West v. Municipal Court for the City of O'Fallon, Missouri, and Jeremiah "Jay" Nixon, Attorney General for the State of Missouri.

Dated this 3rd day of October, 2006.


UNITED STATES DISTRICT JUDGE